THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.17476 OF 1997

Date: 28-12-2006

Between:

1. Damisetti Nageswara Rao,
   S/o Damisetti Ramaiah, aged 57 years,
   R/o S.No.810/1A,19-34-1, Attili (v) ,
   and mandal, W.G. District and another.

... Petitioners.

And

1.The Secretary, Panchayat Raj Department,
  Secretariat, Hyderabad, and 4 others.

... Respondents.

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ORDER:

W.V.M.P.No.815 of 2006 is filed by respondents 3 to 5 in W.P.No.17476 of 1997 to vacate the interim order dated 31.7.1997 in W.P.M.P.No.21186 of 1997. This court issued Rule Nisi on 31.7.1997 and granted interim stay as prayed for.

2. The writ petition is filed for a writ or order or direction especially one in the nature of Mandamus directing the respondents not to obstruct Pachi Pulusu Vari Veedhi lane extending to the open area before the Muslim burial ground by constructing any structures on the said lane; and to declare the action of the respondents in trying to obstruct the Pachi Pulusu

Vari Veedhi, as illegal, arbitrary and opposed to Articles 19 and 21 of the Constitution of India and pass such other suitable orders.

3. Several factual details are narrated in paragraphs 3 to 12 of the affidavit filed in support of the writ petition. On a careful reading of the facts, which had been averred in the writ petition, it is clear that these are all factual controversies.

4. In the counter-affidavit filed, several averments made in the writ petition had been specifically denied. It is stated that in fact the Mandal Parishad Development Officer, Attili had applied for alienation of the land in survey No.810/1A of Attili village for construction of Mandal Parishad Development Officer's building, which is meant for public purpose. Certain facts relating to who is fair price shop dealer and other facts also had been narrated and specific stand is taken that the oil mill by name Sri Mahendra and Mahendra Oil and Flour Mill in door No.19-34-1 is not functioning at present and it is a defunct mill. Further specific stand is taken that Pachipulusu Vari Veedhi is not a 25 feet wide street and it is only 22 feet wide street. The said veedhi is not under regular use by the public or for vehicular traffic and this lane is not being used as way. The festival of Goddesses Venkamma and Mahankalamma is used to be performed for three or four days near the temple and the festival of these Goddesses are not being performed in the said site and the old well adjacent to the Venkamma and Mahankalamma Pillar is not in usage at all and it was filled with waste and garbage by the Gram Panchayat, Attili. This site is totally village site and the petitioners have no right

over the said site. It is also further stated that the defunct oil mill and Muslim burial ground are located towards northern side of the said site in R.S.No.810/1A and the site previously proposed for construction of Mandal Parishad Development Officer's building is totally separate. The Muslims can use the street for the purpose of taking the dead bodies to the burial ground as and when necessity arises. The site previously proposed for construction of Mandal Parishad Development Officer's building is not at all obstructing the interest of the petitioners. They are having their regular way and there is no proposal of construction of Mandal Parishad Development Officer's building now in the said site as the Mandal Parishad Development Officer's building had been constructed recently in another site i.e., in the weekly market site in R.S.No.779 of Attili village. Certain other factual details had been narrated in paragraphs 7 to 12 of the counter-affidavit.

5. In the light of the specific stand taken in the counter-affidavit that the respondents are not causing any obstruction, whatsoever, to the regular way and further in the light of the specific stand taken that the Mandal Parishad Development Officer's building had been constructed elsewhere, the respective averments are hereby recorded and in the light of the same, the writ petition is disposed of accordingly, inasmuch as no further orders need be passed in view of the specific stand taken in the counter-affidavit by respondents 3 to 5. Inasmuch as several factual controversies are involved, the writ petitioners also are at liberty to agitate their rights, if any, by invoking appropriate remedy, if the petitioners are so advised.

6. With the above observations, the writ petition is disposed of. No order as to costs.

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(P.S.NARAYANA, J.)

Date: December 28, 2006.

BSB